No. 17-647

In The
Supreme Court of the United States

ROSE MARY KNICK,

Petitioner,

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL.,

Respondents.

On Writ of Certiorari To
The United States Court Of Appeals
For the Third Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF HOME BUILDERS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Court should reconsider the portion of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-96 (1985), requiring property owners to exhaust state court remedies to ripen federal takings claims, as suggested by Justices of this Court. *See Arrigoni Enterprises, LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas, J., joined by Kennedy, J., dissenting from denial of certiorari); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 348 (2005) (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring in judgment).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, *Amicus* National Association of Home Builders (NAHB) states that it is a non-profit 501(c)(6) corporation incorporated in the State of Nevada, with its principal place of business in Washington, D.C. NAHB has no corporate parents, subsidiaries or affiliates, and no publicly traded stock. No publicly traded company has a ten percent or greater ownership interest in NAHB.

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Home Builders (NAHB) is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. Chief among NAHB's goals is to provide and expand opportunities for all people to have safe, decent, and affordable housing. Founded in 1942, NAHB is a federation of more than 700 state and local associations. About one-third of NAHB's approximately 140,000 members are home builders or remodelers, and constitute 80% of all homes constructed in the United States. NAHB is a vigilant advocate in the nation's courts. It frequently participates as a party litigant and *amicus curiae* to safeguard the constitutional and statutory rights and business interests of its members and those similarly situated.

Housing providers depend on clear regulatory and legal processes that do not infringe on constitutionally-protected property rights. This Court's decision in *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, has had the opposite effect; not only confusing property owners but also creating chaos between the lower courts. 473 U.S. 172 (1985).

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Blanket consents by both parties are on file with the Court.

The ability of all property owners to have their constitutional claims heard predictably and transparently is vital to the interest of NAHB and its members. NAHB continues to be disturbed by the faulty rationale and application of *Williamson County*, and in particular, its expansion by the lower courts to prevent constitutional claims of all types, including takings, due process, and equal protection land use claims, from entering the federal courthouse.

SUMMARY OF ARGUMENT

It has been over three decades since this Court's *Williamson County* decision. Since then, various contours of the Fifth Amendment's substantive protections have been analyzed by this Court, but the most fundamental jurisdictional question -- "When, if ever, can a federal court hear a federal takings claim?" remains admittedly unclear. *See e.g, San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 348-349 (2005) (Rehnquist, C.J., concurring) (stating that the state-litigation rule "may have been mistaken," and that "[i]t is not clear that *Williamson County* was correct in demanding" that a claimant must first seek a compensation remedy through state litigation as a prerequisite to ripen a federal takings claim).

As a result, the federal courts are in chaos on how to apply *Williamson County's* ripeness test, not only to takings claims, but also to due process and equal protection land use claims. In fact, many lower courts continue to expand *Williamson County's* state exhaustion prong to include due process and equal protection claims, thus closing the federal courthouse door for constitutional land use claims. It is of little consolation that members of this Court have recognized that *Williamson County* should not be extended to other constitutional claims. *Arrigoni Enterprises, LLC v. Town of Durham, Conn*, 136 S. Ct. 1409, 1411 (2016) (Thomas, J., joined by Kennedy, J., dissenting from denial of certiorari) (noting that "[p]laintiffs alleging violations of other enumerated constitutional rights ordinarily may do so in federal court without first availing themselves

of state court. But the same is not true for a Takings Clause plaintiff.").

Further, nothing in the Court's *Williamson County* decision or any other Supreme Court case suggests that a due process or equal protection claimant must exhaust state remedies prior to bringing a claim in federal court. In fact, this Court in *Lingle v. Chevron* further clarified the constitutional separation between federal due process and takings claims. 544 U.S. 528 (2005).

It is high time for this Court to acknowledge the inability of lower courts to apply *Williamson County* in a fair and uniform matter. *Williamson County's* state exhaustion prong is neither fair nor just, and prevents federal takings, due process, and equal protection claimants from seeking relief in federal court. This Court should reverse the Third Circuit's decision, and overturn *Williamson County* to clarify that federal takings, due process, and equal protection claims are ripe for federal review once the state infraction occurs.

ARGUMENT

I. LAND USE CLAIMANTS OFTEN SEEK CONSTITUTIONAL REMEDIES OTHER THAN JUST COMPENSATION

Lower courts continue to ignore fundamental differences between takings claims and non-takings claims, and require plaintiffs to exhaust state procedures for not only takings claims, but other constitutional claims. Several Circuits require property owners to exhaust state remedies to ripen substantive due process, procedural due process, or

equal protection land use claims. *See, e.g., River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 167 (7th Cir. 1994) (holding that property owners may not avoid *Williamson* by bringing substantive or procedural due process land use claims); *Deniz v. Mun. of Guaynabo*, 285 F.3d 142, 149 (1st Cir. 2002) (holding that "no substantive due process claim will lie until [an inverse condemnation remedy] is exhausted."); *J.B., Ranch, Inc. v. Grand County*, 958 F.2d 306, 308 (10th Cir. 1992) (applying *Williamson County* to plaintiff's substantive due process claim because the facts of the case "fit squarely within the analysis developed in just compensation cases."); *Kurtz v. Verizon New York, Inc.*, 758 F.3d 506, 515 (2d Cir. 2014) (stating that *Williamson County* "has been extended to equal protection and due process claims asserted in the context of land use challenges.") (citations omitted).

This Court should rule that takings claims *and* other constitutional land use claims can go to federal court without first exhausting state procedures.

A. Government Action Against Land Use Claimants Often Implicates Substantive Due Process, Procedural Due Process, and Equal Protection Rights

A single land use fact pattern often implicates several separate constitutional guarantees. For example, one scenario could include a forced conveyance of private property to an elected official in return for a permit approval. *Forseth v. Vill. of Sussex*, 199 F.3d 363, 366 (7th Cir. 2000). Still another could include intentional delay tactics by

governmental officials so egregious that land use applicants face foreclosure, and possible personal bankruptcy. *Sherman v. Town of Chester*, 752 F.3d 554 (2d Cir. 2014). These scenarios can include allegations of arbitrary government action, failure to provide adequate notice, and discriminatory conduct.

Forseth, *Sherman*, and countless other land use cases, illustrate that:

> Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, [courts] are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather, [courts] examine each constitutional provision in turn.

Soldal v. Cook County, 506 U.S. 56, 70 (1992).

Thus, when faced with government action that adversely affects property, land use claimants often bring multiple constitutional claims in additional to Fifth Amendment Takings, including substantive due process, procedural due process, and equal protection. When claimants bring multiple claims, courts must undoubtedly focus on "the nature of the right assertedly threatened" rather than the "power being exercised or the specific limitation imposed" by the offending party. *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981). In addition to takings claims, alleged violations of due process and equal protection are often at the heart of land use cases. *See Vill. of Euclid, Ohio v. Ambler Realty Co.*,

272 U.S. 365 (1926); *Nectow v. City of Cambridge*, 277 U.S. 183 (1928); *Vill. of Belle Terre v. Boraas*, 416 U.S. 1 (1974). Importantly, the injury upon property owners for due process and equal protection violations has never been connected to just compensation.

For substantive due process, this Court states:

> [T]he Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.' As to th[is] type of claim [], the constitutional violation actionable under [Sec] 1983 is complete when the wrongful action is taken. A plaintiff, under *Monroe v. Pape*, may invoke § 1983 regardless of any state-tort remedy that might otherwise be able to compensate him for the deprivation of these rights.

Zinermon v. Burch, 494 U.S. 113, 125 (1990) (citations omitted); *see also County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (stating that the Court has "emphasized time and again that '[t]he touchstone of due process is protection of the individual against arbitrary action of government'") (citations omitted).

Similarly, procedural due process violations have nothing to do with just compensation. This Court states "[i]t is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing . . ." *Carey v.*

Piphus, 435 U.S. 247, 266, *citing Fuentes v. Shevin*, 407 U.S. 67, 87 (1972). In fact, a showing of *any* injury is not necessary for procedural due process claims, let alone a government failure to provide just compensation. *Id.* (stating that "denial of procedural due process should be actionable for nominal damages without proof of actual injury.").

Finally, state infractions on equal protection rights occur at the moment the unconstitutional discrimination occurs. This Court recognizes that "[t]he purpose of the equal protection clause . . . is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statue or by its improper execution through duly constituted agents." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (citations omitted).

Clearly, in procedural due process, substantive due process, and equal protection, the focus is the wrongful action by the government, not whether the plaintiff received just compensation.

B. The Court's Takings Cases Recognize a Distinction Between Takings Claims and Other Constitutional Claims.

Even this Court's takings cases make a clear distinction between just compensation claims and other constitutional claims, such as due process and equal protection. In *Loretto v. Teleprompter Manhattan CATV Corp.*, this Court stated that "The [lower court] determined that [the state statute] serves [a] legitimate public purpose . . . and thus is within the State's police power. We have no reason to question that determination. It is a separate

question, however, whether an otherwise valid regulation so frustrates property rights that compensation must be paid." 458 U.S. 419, 425 (1982).

Similarly, in *Lucas v. South Carolina Coastal Council*, a property owner brought a claim under the Takings Clause claiming that the enactment of a state statute that prohibited any development on his property constituted a taking under the Fifth Amendment. Here, the Court noted that the Petitioner "did not take issue with the validity of the [statute] as a lawful exercise of South Carolina's police power, but contended that the Act's complete extinguishment of his property value entitled him to compensation regardless of whether the legislature had acted in furtherance of legitimate police power objectives." 505 U.S. 1003, 1009 (1992) (emphasis added).

Additionally, the type of remedies available under just compensation compared to other constitutional claims is further evidence that courts should not apply *Williamson County* to all land use constitutional claims. This Court in *Williamson County* held that the injury in the takings context is not the taking of property; but rather the lack of just compensation for the taking. Just compensation does "not include such consequential damages as lost profits, lost opportunities, attorneys' fees, relocation costs, or loss of good will." Karena C. Anderson, *Strategic Litigating in Land Use Cases: Del Monte Dunes v. City of Monterey*, 25 Ecology L.Q. 465, 481 (1998). These are remedies for due process and equal protection violations. Under § 1983, remedies for due process and equal protection

violations can include injunctive or declaratory relief, and damages. *Id.* This includes consequential and incidental damages. It makes little sense to ignore these remedial differences between just compensation claims and other constitutional claims.

Despite significant difference in remedies and injury, courts continue to ignore the important differences between land use constitutional claims. For example, the Seventh Circuit, relying on *Williamson County*, holds:

> "[A] property owner may not avoid *Williamson* by applying the label 'substantive due process' to the claim . . . [so] too with the label 'procedural due process.' Labels do not matter. A person contending that state or local regulation of the use of land has gone overboard must repair to state court."[2]

River Park, 23 F.3d at 167.

Due process and equal protection rights are not mere "labels." There are substantial, constitutionally important, and distinct differences between due process, equal protection, *and* takings

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[2] Interestingly, the court held that claimant's equal protection claim was not subject to *Williamson County*, noting that claimant's allegation of "malicious" conduct by a governmental agent was "wholly unrelated to any legitimate state objective." *Id.* at 370, 371. It is nigh impossible to decipher why the Seventh Circuit categorially applies *Williamson County* to due process claims while providing limited exceptions for equal protection.

claims. It is time for this Court to hold that all land use constitutional claims can be heard by federal courts without having to exhaust state procedures.

II. THIS COURT NEVER INTENDED FOR *WILLIAMSON COUNTY'S* STATE EXHAUSTION REQUIREMENT TO SERVE AS A BLANKET RULE FOR ALL LAND USE CONSTITUTIONAL CLAIMS.

A. It is Textually Clear That *Williamson County* Should Not be Applied to Due Process and Equal Protection Claims.

Williamson County created a two-part ripeness test for *solely* as-applied regulatory takings claims. *See e.g., Kurtz* at 514 (stating that [i]n *Williamson County*, this Court "did not reach any issue of exhaustion" for any claims other than Fifth Amendment Takings); *Culebras Enterprises Corp. v. Rivera Rios*, 813 F.2d 506, 515 (1st Cir. 1987) (noting that "[w]e are aware that, in *Williamson County*, the availability of a state inverse condemnation remedy was only held to defeat plaintiff's just compensation clause claim.").

Nothing in *Williamson County* or any other Supreme Court case suggests that federal courts should require substantive due process, procedural due process, or equal protection claimants to first exhaust state remedies. Instead, the Court clarified in *Williamson County* that § 1983 claims, including due process and equal protection claims, do not have to exhaust state remedies.

This Court notes:

> [w]hile it appears that the State provides procedures by which an aggrieved property owner may seek a declaratory judgment regarding the validity of the zoning and planning actions taken by county authorities . . . [a litigant] would not be required to resort to those procedures before bringing [a] [Sec] 1983 action, because those procedures are clearly remedial.

Williamson County at 193.

Further, the *Williamson County* Court went on to say that "[t]he remedy for a regulation that goes too far, under the due process theory, is not 'just compensation', but invalidation of the regulation, and if authorized and appropriate, actual damages." *Williamson County* at 197.

It is telling that even when the *Williamson County* Court analyzed the due process claim, it refused to require Respondent Hamilton Bank to exhaust state remedies, noting that the due process claim was premature *only* because "no [final] decision had been made at the time respondent filed its Sec. 1983 action." *Id.* at 200.

Further, the *Williamson County* Court's reliance on *Parratt v. Taylor* to justify the state procedures rule is misplaced. *Id.* at 195, *citing Parratt v. Taylor*, 451 U.S. 527 (1981). True, *Parratt* is a procedural due process case where the Court held that postdeprivation process provided to a prison inmate for the "random and unauthorized" act of losing the

inmate's mail did not violate the Fourteenth Amendment. *Id.* at 541. However, it is difficult to see how this translates as a blanket for all land use claims, where most, if not all are "nonrandom acts for which pre-deprivation hearings are not only feasible, but actually held." J. David Breemer, *Ripeness Madness: The Expansion of Williamson County's Baseless "State Procedures" Takings Ripeness Requirement to Non-Takings Claims*, 41 Urb. Law. 615, 637 (Fall 2009).

By overturning *Williamson County's* state exhaustion prong, this Court will make clear to lower courts that *Williamson County* was never intended to require due process and equal protection land use claimants to exhaust state procedures prior to bringing the claim in federal court.

B. Despite no Precedential Basis, Courts Continue to Apply *Williamson County* to Other Constitutional Claims.

A look at how *Williamson County* is applied by the lower federal courts clearly shows the inability of our courts to create a workable set of rules for *Williamson County*. Lower courts continue to expand *Williamson County* to substantive due process and other constitutional claims, and in the process have created an indecipherable set of ripeness standards to land use claims.

An examination of the Second & Sixth Circuits exemplifies the intra-circuit chaos caused by *Williamson County*. In *Braun v. Ann Arbor Charter Twp.*, the Sixth Court recognized that it is unclear whether due process and equal protection claims must satisfy *Williamson County's* exhaustion

requirements. 519 F.3d 564, 572 (6th Cir. 2008). In *Braun*, rather than resolve whether or not *Williamson County* applied to plaintiff's substantive due process or equal protection claims, the Sixth Circuit essentially bypassed *Williamson County's* ripeness analysis. Instead, the court "assumed arguendo" that plaintiff's claims were not "ancillary" to the takings claim, and dismissed the claims on alternate grounds. *Id.* at 574. It is striking that despite essentially bypassing *Williamson County* analysis in *Braun*, the Sixth Circuit continues to hold that *Williamson County* is jurisdictional. *Texas Gas Transmissions, LLC. v. Butler County Bd. Of Comm'rs*, 625 F.3d 973 (2010); *see also, Bigelow v. Mich. Dep't of Natural Res.*, 970 F.2d 154, 157 (6th Cir. 1992) (noting that "[r]ipeness is more than a mere procedural question; it is determinative of jurisdiction. If a claim is unripe, federal courts lack subject matter jurisdiction and the complaint must be dismissed."). It is irreconcilable for the Sixth Circuit to label *Williamson County's* ripeness rule as "jurisdictional" yet at the same time sidestep *Williamson County* as it did in *Braun*.

The Second Circuit admits, it too, is unable to apply *Williamson County* without resorting to a set of contortive exercises. *Kurtz* at 514 ("After *Williamson County*, courts have attempted to settle questions of ripeness in the several contexts of due process claims: substantive or procedural; substantive claims alleging regulatory overreach or those alleging arbitrary and capricious conduct; claims arising from the same nucleus of fact as a taking claim, or not; and regulatory or physical takings. Myriad permutations can result."). In

reality, this Court has never suggested that lower courts create new standards to fit due process and equal protection claims into *Williamson County's* framework.

This Court must overturn *Williamson County's* state exhaustion requirement in order to restore a comprehensible set of ripeness rules for land use claims.

III. *LINGLE V. CHEVRON* IS THIS COURT'S CLEAREST EXPRESSION THAT DUE PROCESS AND TAKINGS CLAIMS ARE DISTINCT, YET COURTS CONTINUE TO RELY ON *WILLIAMSON COUNTY* TO SUBSUME DUE PROCESS CLAIMS.

For well over a decade, it has been clear that Fifth Amendment Takings claims are separate and distinct from due process cases. *Lingle v. Chevron*, 544 U.S. 528 (2005). In *Lingle*, the Court determined that the "substantially advances legitimate state interests [test]" was not a proper takings standard. *Agins v. City of Tiburon*, 447 U.S. 255 (1980), *abrogated by Lingle* at 542. By eliminating the substantially advances test, the Court separated due process claims from Fifth Amendment regulatory takings claims.

In *Lingle*, this Court admitted the Agins means-ends inquiry was one that "commingl[ed] of due process and takings inquiries," and that such "reliance on due process precedents" has "no proper place in [our] takings jurisprudence." *Id.* at 529. Certainly, "[a takings] suit pursuing just compensation is entirely irrelevant to the validity of land use regulations, and has no effect on any facts

relevant to [a due process] claim." Nader James Khorassani, *Must Substantive Due Process Land Use Claims Be So "Exhaust"ing?*, 81 Fordham L. Rev. 409, 443 (Oct. 2012); *see also, Harris v. City of Akron*, 20 F.3d 1396, 1405 (6th Cir. 1994) (substantive due process violations include " . . . official acts that are unreasonable and arbitrary and 'may not take place no matter what procedural protections accompany them' . . .") (citation omitted).

This Court was particularly concerned that the *Agins'* due process-like test "reveals nothing about the *magnitude or character of the burden* a particular regulation imposes on private property rights." This, the Court admitted, "is logically prior to and distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose." *Lingle* at 543.

Some lower federal courts have recognized that *Lingle* foreclosed the ability of federal courts to assert that all constitutional claims brought in the context of a property rights case are subsumed by the Fifth Amendment. *See e.g., Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851 (9th Cir. 2007). Prior to the *Crown Point* decision, the Ninth Circuit refused to allow property owners to bring due process or equal protection claims in cases involving real property. *Armendariz v. Penman*, 75 F.3d 1311 (9th Cir. 1996); *see also, A Helping Hand, LLC v. Baltimore County, MD.*, 515 F.3d 356, 369 n.6 (4th Cir. 2008); *Rose Acre Farms, Inc. v. U.S.*, 559 F.3d 1260, 1277 (Fed. Cir. 2009). The *Crown Point* court, however, explained that "*Lingle* pulls the rug out from under our rationale for totally precluding

substantive due process claims based on arbitrary or unreasonable conduct." *Crown Point* at 855.

Unfortunately, other courts continue to apply *Williamson County's* state exhaustion rule to some or all constitutional claims in the land use context, by subsuming other constitutional claims into a takings claim. In *Deniz v. Mun. of Guaynabo*, the court refused to hear a due process claim, noting that "[d]ressing a takings claim in the raiment of a due process violation does not serve to evade the exhaustion requirement. Here as we have said, the inverse condemnation remedy represents an arguably available and adequate means of obtaining compensation for the alleged taking. Thus, no substantive due process claim will lie until that remedy is exhausted." 285 F.3d 142, 149 (1st Cir. 2002) *quoting Ochoa Realty Corp. v. Faria, et al.*, 815 F.2d 812, n.4 (1987); *see also, Downing/Salt Pond Partners, L.P. v. Rhode Island and Providence Plantations*, 643 F.3d 16, 28 (1st Cir. 2011) (noting that the court has "held that a plaintiff cannot, [evade *Williamson County*] merely by recasting its takings claim 'in the raiment of a due process violation'.") (citations omitted).

Similarly, the Seventh Circuit requires property owners to exhaust state procedures to ripen substantive due process claims in federal court. In *Forseth*, the plaintiffs attempted to develop a piece of property, but the village conditioned final approval upon a private conveyance of a buffer strip to the village board president. 199 F.3d at 366 (7th Cir. 2000). The plaintiffs conveyed the strip and subsequently brought a claim in federal district court, claiming violations of substantive due process,

equal protection, and takings. *Id.* at 367. Despite recognizing the "private nature of [the government's] extorted acts" the court nevertheless applied *Williamson County* to the claimant's substantive due process claim because it fell "within the framework for takings claims." *Id.* at 370. This makes no sense. How can it be that a court can essentially subsume a claimant's substantive due process claim into a takings claim, despite recognizing the "troubling facts and allegations" the "significant private pecuniary gain achieved by [the village board president]" and the "questionable use of his governmental position and authority." *Id.* at 370. In fact, the Seventh Circuit's position is nearly absolute, noting that it "ha[s] yet to excuse *any* substantive due process claims[s] in the land-use context . . ." *Id.* at 369 (emphasis added).

Lingle is generally regarded as this Court's most committed expression of modern takings jurisprudence. If due process and equal protection claims are now separate from takings claims, then *Williamson County's* state exhaustion requirement should not apply to these related constitutional claims. It is baffling that *Williamson County* continues to throw a shadow not only over ripeness standards, but the doctrinal takings and due process standards that were settled in *Lingle*. It is for this reason that this Court must be explicit and override *Williamson County*.

CONCLUSION

"Considerations of 'fairness and justice'" lie at the heart of the Takings Clause. *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 333 (2002). It is neither fair nor just to allow a municipal defendant to expand *Williamson County* to foreclose a claimant's due process or equal protection claim, when there are fundamental differences between takings and other constitutional claims. Nothing in *Williamson County* or any other precedent from this Courts dictates such a result. In fact, *Lingle* should provide direction to the lower courts to treat takings distinctly from other land use constitutional claims. Despite this, courts continue to prevent land use claimants from exercising their takings, due process, and equal protection rights in federal court.

It is time for this Court to reverse the decision below, and overrule *Williamson County's* holding requiring land use plaintiffs to exhaust state procedures prior to bringing a claim in federal court.

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